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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/074,496

05/07/98

ALBRITTON

J

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BAKER AND BOTTS
2001 ROSS AVENUE
DALLAS TX 75201-2980

EXAMINER

KIM, H

ART UNIT

PAPER NUMBER

3629

DATE MAILED:

11/24/00

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.
09/074,496

Applicant(s)
Albritton

Examiner
Harry C. Kim

Group Art Unit
3629



☒ Responsive to communication(s) filed on Sep 7, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-29, 31-33, and 36-38 is/are pending in the application.

Of the above, claim(s) 1-4, 13-23, 29, and 31 is/are withdrawn from consideration.

☒ Claim(s) 5-8, 24-27, 32, 33, and 36 is/are allowed.

☒ Claim(s) 9-12, 28, 37, and 38 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on May 23, 2000 is ☐ approved ☒ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters **162 & 164** have been used to designate both *soil plates in Figs. 4-6* and *bolt/nut in Figs. 7-9*. Thus, the proposed drawing corrections filed on 5/23/00 for Figs. 8-9 have not been approved.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 37-38 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The disclosure for the elected species (Figs. 4-6) does not include a second fastener for connecting the joint member to the lower post member. Therefore, as recited in the newly added claim 37, the limitation of the second end of the connecting joint member being connected to the lower post member by a second fastener wherein a second failure strength of the second fastener is greater than a first failure strength of a first fastener is deemed to be new matter.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, the terms "the first portion" and "the second portion" of line 9 lack proper antecedent bases.

The preceding list is not intended to be a comprehensive recitation of the informalities. Applicant is urged to carefully review and make appropriate corrections.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 28 is rejected under 35 U.S.C. § 102(b) as being anticipated by Montgomery, newly cited. Montgomery discloses all of the claimed structural limitations of a support post comprising an elongated body having a first portion 19, a second portion 11, and a frangible connection including

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a rotatable coupling assembly 15 and a shearing pin assembly 16.

Applicant is reminded that the limitation of the support post being used for mounting a guardrail thereon as part of a highway guardrail system is deemed intended use and thus, cannot be given patentable weight since the claims are directed only to the support post and not in combination with the guardrail of the highway guardrail system.

Allowable Subject Matter

Claims 5-8, 24-27, 32-33, and 36 are allowable over the prior art of record.

Claims 9-12 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112.

Interference

Claims 37-38 of this application have been copied by the applicant from U. S. Patent No. 5,988,598. These claims are not patentable to the applicant because the elected species of the instant application fails to show the second end of the connecting joint member being connected to the lower post member by a second fastener. As discussed above, this limitation is deemed to be new matter which cannot be supported by the originally filed disclosure.

An interference cannot be initiated since a prerequisite for interference under 37 CFR 1.606 is that the claims be patentable to the applicant subject to a judgement in the interference.

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Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stout, Rebentisch et al., Wilcox, Hugron, and Saeed et al. show similar support posts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Harry C. Kim whose telephone number is (703) 308-2248. The examiner can normally be reached on Mon.-Fri. from 5:30 AM to 3:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne, can be reached on (703) 308-1159. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

HCK
November 20, 2000


HARRY C. KIM
PRIMARY EXAMINER
TECH CENTER 3600